

Applicants elect, with traverse, for search purposes only, species (2) an optical recording medium with specified pattern configuration of concaves and convexes for examination. Claims 5-9 and 17 read on the elected species.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. §803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P. §803). Applicants respectfully traverse the Election of Species Requirement on the grounds that the Examiner has not carried the burden of providing any reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed (M.P.E.P. § 808.01(a)). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only.

Finally, with respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

For the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Election of Species Requirement. Therefore, withdrawal of the Election of Species Requirement is respectfully requested.

Applicants respectfully submit that the Office has not shown that a serious burden exists in searching the entire application.

Application No. 10/602,598

Reply to Office Action of November 16, 2004.

Applicants submit this application is now in condition for examination on the merits
and early notification of such action is earnestly solicited.


Respectfully submitted,

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